IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14423 of 2005

For Approval and Signature:
HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHAMMAD SAFI AHMEDMALEK - Petitioner(s)

Versus

MUSTUFA MIRJA & 2 - Respondent(s)

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Appearance :
MR AS ASTHAVADI for Petitioner No(s).: 1.
RULE SERVED BY DS for Respondent No(s).: 1, 2,3.
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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA
Date : 08/08/2005

ORAL JUDGMENT

1.By filing instant petition under Article 226/227 of the Constitution of India, the petitioner seeks to challenge the order dated 30.11.2004 rendered below application exh.1 in Misc. Application No. 3 of 2002 by the MACT (Aux.), Vadodara, by which the application filed by the petitioner seeking condonation of delay of 4 years and 8 months caused in filing the Review Application in the judgement and award rendered in MACP

No. 191 of 1993 has been rejected.

2. The petitioner met with an accident on 5.12.1992 at about 9:00 AM near village Por, Jalaram Petrol Pump on National Highway No.8 under Varnama Police Station by Truck No. GJ 9T-5923. At the relevant time the petitioner was working as a Cleaner on the said Truck. The Driver of the said Truck could not control the Steering as a result thereof the Truck turned turtle. In the said accident the petitioner was grievously injured. He was immediately taken to SSG Hospital Vadodara. The petitioner had sustained fracture of right hand ulna bone with other injuries.

3. The petitioner therefore filed MACP No. 191 of 1992 on 2.2.1993 to recover Rs.25000/-. The Opponent No.1 did not supply the name and address of the Insurance Company and therefore the MACT, Vadodara on adjudication passed an award on 28.10.1996 against opponent nos. 1 and 2, that is, the Driver and owner of the Truck involved in the accident. After passing of the award the petitioner filed execution petition against the Driver and owner which was served to opponent no.2. In the said execution petition, opponent no.2 raised the issue of jurisdiction, therefore the execution petition was withdrawn without any order. Then opponent no.2 supplied the information about the insurance policy which was taken by him. The petitioner, therefore, filed review application seeking relief to implead Insurance Company in the main claim petition which was adjudicated. Since the said review application was filed after 4 years and 8 months, the petitioner had also filed application seeking condonation of delay in filing the review application. The MACT (Aux.), Vadodara rejected the application

seeking condonation of delay which has given rise to this petition at the instance of the original claimant.

4. This Court has considered the submissions advanced by Mr. A.S.Asthavadi, learned advocate of the petitioner and perused the impugned order and also the other orders, including the order recorded in the main claim petition, that is, MACP 191 of 1992 by the MACT (Aux.), Vadodara.

5. So far as the factual matrix is concerned, there is no dispute that the accident did take place on 5.12.1992 at about 9:00 AM near village Por, Jalaram Petrol Pump on National Highway No.8 under Varnama Police Station by Truck No. GJ 9T-5923. At the relevant time the petitioner was working as a Cleaner on the said Truck. The Driver of the said Truck could not control the Steering as a result thereof the Truck turned turtle. In the said accident the petitioner was grievously injured. He was immediately taken to SSG Hospital Vadodara. The petitioner had sustained fracture of right hand ulna bone with other injuries. The petitioner therefore filed MACP No. 191 of 1992 to receive compensation of Rs.25000/-. Since the petitioner could not get the name of the Insurance Company, the petition proceeded against the Driver and the owner of the Truck. The MACT(Aux.), Vadodara vide judgement and award dated 28.10.1996 allowed the claim petition filed against the opponent No.1 and 2 as the Insurance Company was not impleaded as party respondent by the petitioner and awarded compensation of Rs.25000/- together with interest and cost in favour of the petitioner.

6. Thereafter during the execution proceedings respondent

no.2-owner, supplied the address of the Insurance Company, therefore petitioner sought review of the order by permitting him to implead the Insurance Company. Since the said application was filed at belated stage, the petitioner has also filed application seeking condonation of delay caused in filing the review application. The Tribunal has rejected the said application.

7. According to this Court, since the opponent no.2 – original owner has not cooperated with the claimant as well as the Tribunal by not supplying the name of the Insurance Company which has resulted in passing of the award against the Driver and owner. If the opponent no.2 – owner had supplied the name well in time then award could have been passed against the Insurance Company as well. Immediately coming to know about the vehicle being insured with the Insurance Company, the petitioner rushed to the Court seeking review of the order and also filed application seeking condonation of delay. According to this Court, the Tribunal ought to have allowed the application seeking condonation of delay to do the justice in favour of the claimant.

8. The matter did not rest there. The petitioner also wrote a letter to the Insurance Company seeking particulars about the Insurance of the vehicle involved in the accident. The Insurance Company did not cooperate by replying the said letter. In this proceeding also Insurance Company elected to remain absent. In such type of matters, the Insurance Company ought to have filed reply even before this Court and as well ought to have replied to the claimant with regard to the insurance of the vehicle involved in the accident.

9. According to this Court, the reason assigned by the Tribunal for not condoning the delay caused in filing the review application is not convincing to this Court as there was no fault on part of the petitioner. The petitioner has immediately filed application seeking review of the order on coming to know about the insurance coverage taken by the owner of the vehicle. Therefore, according to this Court, the Tribunal ought to have allowed the application.

10. For the foregoing reasons, the impugned order deserves to be quashed and set aside by allowing this petition.

11. For the foregoing reasons, the petition succeeds and according it is allowed with no order as to costs, the result of which is that the order dated 30.11.2004 rejecting the application seeking condonation of delay, is hereby quashed and set aside and the said application is allowed. Rule is made absolute.

12. The Tribunal shall now proceed with the hearing of review application and shall decide the same in accordance with law and also in view of the fact that the legislation of Motor Vehicles Act is a benevolent piece of legislation enacted with a view to safeguard the interest of the victims of the road accident.

Direct service permitted.

(A.M.Kapadia,J)

Jayanti*